

SB 145 (DeSaulnier)
As Amended April 27, 2009
WORKERS' COMPENSATION
Fact Sheet

SUMMARY

SB 145 will bar the consideration of race, national origin, gender, sex, genetic predisposition, and certain other factors in the delivery of workers' compensation benefits and the determination of an apportionment of the causes of an industrial disability.

BACKGROUND

Since the passage of SB 899 (Poochigan) in 2004, there have been increasing reports that physicians are reading the law as requiring apportionment in all workers' compensation cases on the basis of "risk factors" such as age, race, sex, and genetic predisposition – rather than apportionment on actual evidence of pre-existing medical condition. For example, in *Vaira v Workers Comp. Appeals Board* (2006), the appellate court sent the case back to the Workers' Compensation Appeals Board, stating that the physician who had done the apportionment failed to base the apportionment on actual medical evidence. The physician based the apportionment on the grounds that the individual in the case was an elderly woman at high risk of osteoporosis. However, the physician did not demonstrate the link between any actual condition and the disability.

Similarly, the denial of workers compensation by Dollar Tree after the murder of Tameka Talley also demonstrated other shortcomings in existing law. In 2006, Ms. Talley was stabbed to death while opening a Dollar Tree store by a man she had never met in a racially-motivated murder. The insurer denied benefits to Ms. Talley's 11 year old son because the crime was "purely race motivated" and not work related.

PREVIOUS LEGISLATION

SB 1115 (Migden) of 2008 would have barred the consideration of race, national origin, gender, sex, genetic predisposition, and certain other factors in the determination of an apportionment of the causes of an industrial disability. It was vetoed by the Governor.

THIS BILL

SB 145 will bring workers' compensation benefit delivery and apportionment into agreement with existing anti-discrimination law by:

- a) Prohibiting the denial of a workers' compensation benefit claim if the employee's injury or death was related to the employee's race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic predisposition; and
- b) Providing that race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic predisposition shall not be considered a cause or other factor of disability with regard to any workers' compensation determination.

STATUS

January 2010 – Assembly Floor

SUPPORT

- California Applicant Attorneys Association (Sponsor)
- American Federation of State, County and Municipal Employees, AFL-CIO
- California Communities United Institute
- California Labor Federation, AFL-CIO

- California Nurses Association
- California School Employees Association, AFL-CIO
- Glendale City Employees Association
- Organization of SMUD Employees
- Peace Officer's Research Association of California (PORAC)
- San Bernardino Public Employees Association
- San Luis Obispo County Employees Association
- Santa Rosa City Employees Association

OPPOSITION

- Acclamation Insurance Management Services
- Association of California Insurance Companies
- California Association of Joint Powers Authorities
- California Chamber of Commerce
- California Chapter of the American Fence Contractors' Association
- California Fence Contractors' Association
- California Manufacturers and Technology Association
- Engineers Contractors' Association
- Flasher/Barricade Association
- Marin Builders' Exchange

FOR MORE INFORMATION

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